

BK1006398
SAB

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
AT COLUMBUS

IN RE:

David Daniel Shaw
April Robin Shaw

Debtors

Case No. 10-58016

Chapter 7

Judge Preston

**MOTION OF U.S. BANK, N.A. FOR
RELIEF FROM STAY
(PROPERTY ADDRESS: 223 WEST
SHERIDAN AVENUE, SOMERSET, OH
43783)**

U.S. Bank, N.A. (the “Movant”) moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

- 1** The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2 A copy of the Deed to the subject property is attached hereto as Exhibit "A". On April 25, 2008, the debtor David Shaw obtained a loan from U.S. Bank, N.A. in the amount of \$121,500.00. Such loan was evidenced by a promissory note dated April 25, 2008, (the "Note"), a copy of which is attached as Exhibit "B".

3 To secure payment of the Note and performance of the other terms contained in it, the debtors executed a Mortgage dated April 25, 2008 (the "Security Agreement"). The Security Agreement granted a lien on the real and/or personal property (the "Collateral") owned by the debtors, located at 223 West Sheridan Avenue, Somerset, OH 43783 and more fully described in the Security Agreement.

4 The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the Office of the Perry County Recorder on May 9, 2008. A copy of the Security Agreement is attached to this motion as Exhibit "C". The lien is the First lien on the Collateral.

5 The Note and Security Agreement were transferred as follows:

Mortgage Electronic Registration Systems, Inc., as nominee for U.S. Bank, N.A., its successors and assigns to U.S. Bank, N.A. as evidenced by the assignment recorded on March 24, 2010 attached hereto as Exhibit "D".

6 The value of the Collateral is \$100,000.00. This valuation is based on the Debtor's Schedules.

7 As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$127,443.23, plus interest accruing thereon at the rate of 6.25% per annum (\$20.52 per day) from July 8, 2010.

8 Other parties who may have an interest in the Collateral are N/A.

9 The Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) for these reasons:

Debtors have failed to provide adequate protection for the lien held by the Movant for the reasons set forth below.

This case is a Chapter 7 wherein debtor is in default for payment on the mortgage loan wherein the last payment was applied to the payment due for the month of July, 2009 and there is no equity for the benefit of the estate.

10 This Motion does not seek to affect the rights of the Chapter 7 Trustee.

11 Pursuant to LBR 4001-1(a) (1) Movant has completed the Exhibit and Worksheet attached hereto as Exhibit "E".

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of §362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

/s/ Steven H Patterson
Steven H Patterson, Case Attorney
LERNER, SAMPSON & ROTHFUSS
Bar Registration No. 0073452
Amy D. Vogel, Esq.
Bar Registration No. 0075169
Attorneys for Movant
PO Box 5480
Cincinnati, OH 45201-5480
(513) 241-3100 ext. 3373
(513) 354-6464 fax
sohbk@lsrlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion for Relief from Stay of the secured creditor, U.S. Bank, N.A., was electronically transmitted on July 07, 2010 via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list:

Kenneth L Sheppard, Jr Esq.
450 Alkyre Run Drive
Suite 330
Westerville, OH 43082
ken@sheppardlawoffices.com

Brent A. Stubbins, Trustee
59 N. 4th Street
P. O. Box 488
Zanesville, OH 43702-0488
bstubbins@zanesville.law.pro

Office of the U.S. Trustee
170 North High Street, Ste. 200
Columbus, OH 43215
ustpreion09.cb.ecf@usdoj.gov

The undersigned certifies that a copy of the foregoing Motion for Relief From Stay of the secured creditor, U.S. Bank, N.A., was transmitted on July 07, 2010 via regular U.S. mail, postage pre-paid:

David Daniel Shaw
P. O. Box 605
Somerset, OH 43783

April Robin Shaw
P. O. Box 605
Somerset, OH 43783

/s/ Steven H Patterson
Steven H Patterson, Case Attorney
LERNER, SAMPSON & ROTHFUSS
Bar Registration No. 0073452
Amy D. Vogel, Esq.
Bar Registration No. 0075169
Attorneys for Movant
PO Box 5480
Cincinnati, OH 45201-5480
(513) 241-3100 ext. 3373
(513) 354-6464 fax
sohbk@lsrlaw.com

BK1006398
SAB

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
AT COLUMBUS

IN RE:

David Daniel Shaw
April Robin Shaw

Debtors

Case No. 10-58016

Chapter 7

Judge Preston

**NOTICE OF FILING OF MOTION FOR
RELIEF FROM STAY OF U.S. BANK,
N.A., (PROPERTY ADDRESS: 223
WEST SHERIDAN AVENUE,
SOMERSET, OH 43783)**

OFFICIAL FORM 20A

U.S. Bank, N.A. has filed papers with the Court to obtain relief from the automatic stay.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the Court to consider your views on the motion for relief from stay, then within twenty-one (21) days from the date of this notice, you or your attorney must:

- * File with the Court a written request for a hearing, and a written response setting forth the specific grounds explaining your position at:

Clerk, U.S. Bankruptcy Court
170 North High Street
Columbus, OH 43215

If you mail your request or response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

Office of the U.S. Trustee
170 North High Street, Ste. 200
Columbus, OH 43215
ustpreion09.cb.ecf@usdoj.gov

Steven H Patterson, Esq. - Attorney for Movant
PO Box 5480
Cincinnati, OH 45201-5480
sohbk@lsrlaw.com

Kenneth L Sheppard, Jr Esq. - Attorney for Debtors
450 Alkyre Run Drive
Suite 330
Westerville, OH 43082
ken@sheppardlawoffices.com

Brent A. Stubbins - Trustee
59 N. 4th Street
P. O. Box 488
Zanesville, OH 43702-0488
bstubbins@zanesville.law.pro

at the addresses listed thereon.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DATED: July 07, 2010

/s/ Steven H Patterson
Steven H Patterson, Case Attorney
LERNER, SAMPSON & ROTHFUSS
Bar Registration No. 0073452
Amy D. Vogel, Esq.
Bar Registration No. 0075169
Attorneys for Movant
PO Box 5480
Cincinnati, OH 45201-5480
(513) 241-3100 ext. 3373
(513) 354-6464 fax
sohbk@lsrlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Filing Motion for Relief from Stay of the secured creditor, U.S. Bank, N.A., was electronically transmitted on July 07, 2010 via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list:

Kenneth L Sheppard, Jr Esq.
450 Alkyre Run Drive
Suite 330
Westerville, OH 43082
ken@sheppardlawoffices.com

Brent A. Stubbins, Trustee
59 N. 4th Street
P. O. Box 488
Zanesville, OH 43702-0488
bstubbins@zanesville.law.pro

Office of the U.S. Trustee
170 North High Street, Ste. 200
Columbus, OH 43215
ustpreion09.cb.ecf@usdoj.gov

The undersigned certifies that a copy of the foregoing Notice of Filing Motion for Relief from Stay of the secured creditor, U.S. Bank, N.A., was transmitted on July 07, 2010 via regular U.S. mail, postage pre-paid:

David Daniel Shaw
P. O. Box 605
Somerset, OH 43783

April Robin Shaw
P. O. Box 605
Somerset, OH 43783

/s/ Steven H Patterson
Steven H Patterson, Case Attorney
LERNER, SAMPSON & ROTHFUSS
Bar Registration No. 0073452
Amy D. Vogel, Esq.
Bar Registration No. 0075169
Attorneys for Movant
PO Box 5480
Cincinnati, OH 45201-5480
(513) 241-3100 ext. 3373
(513) 354-6464 fax
sohbk@lsrlaw.com